

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 16 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0101-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ROBERT DONALD MALY,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20040745

Honorable Hector E. Campoy, Judge

REVIEW GRANTED; RELIEF DENIED

Babara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Robert J. Hirsh, Pima County Public Defender
By Michael J. Miller

Tucson
Attorneys for Petitioner

ECKERSTROM, Judge.

¶1 Petitioner Robert Maly was convicted after a jury trial of two counts of theft by control. He appealed the convictions and sentences and this court affirmed, rejecting his arguments that there was insufficient evidence he knowingly had controlled the stolen property and that the trial court erred by giving a jury instruction about the inference of guilt arising from a defendant's flight or concealment after a crime. *State v. Maly*, No. 2 CA-CR 2007-0038 (memorandum decision filed Aug. 21, 2008). He sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. The court rejected two of the claims summarily and the remaining claims after an evidentiary hearing. This petition for review followed. We will not disturb the court's ruling unless we find the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 On review Maly contends the trial court erred in finding he had failed to raise a colorable claim that appellate counsel had been ineffective in failing to challenge on appeal the court's denial of his motion for new counsel. He also contends the court erred in rejecting his claim that trial counsel had been ineffective for failing to file a motion to suppress evidence seized from a Tucson residence pursuant to a warrant. Finally, he asserts the court erred when it found no prejudice from trial counsel's deficient performance in failing to file a motion to suppress certain testimony.

¶3 Both of the trial court's minute entries are clear, thorough, and correct. No purpose would be served by rehashing the court's orders in their entirety here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Maly has not

established the court abused its discretion, and we adopt the court's rulings.

¶4 The petition for review is granted, but relief is denied.

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge